Someone who is managing the assets of another person and stands in a special relationship of trust, confidence, and/or legal responsibility.
Fiduciary duty is all about **justified** trust

Key universal fiduciary duties are:

1. **Prudence** – act with care, skill, diligence and knowledge of a “prudent expert”.
2. **Loyalty** – act in the best interest of the client or beneficiary.

\[
\text{TRUST} = \text{INTEGRITY} + \text{COMPETENCY} + \text{DOING THE RIGHT THING}
\]

Source: Stephen (M R) Covey
“*The Speed of Trust*”
Fiduciary Roles

**Stewards**
Manage the investment decision making process; e.g. Trustees.

**Advisors**
Provide comprehensive and continuous investment advice to Stewards.

**Managers**
Make investment decisions and selects investments to implement a specific investment mandate.

SRI needs to be considered and consistently applied by Stewards, Trustees and Managers. Any gap in chain is a potential *fiduciary breach*, or at least a *best practice shortfall*.
SRI and Fiduciary Obligations

• Historic legal opinion was *unless required* by enabling legislation or a Deed, SRI should not be considered because it entails a potential breach of fiduciary duty.

• The pendulum has shifted as evidence has shown factoring ESG into advice and investment processes can reduce risk and at least do no harm to returns:
  - Clearly seen as part of best practice by “pinnacle” fiduciaries such as NZ Super.
  - NZ Community Trust Sector increasingly allocating to “impact investing”, legal opinions sought do not preclude this. Iwi and Maori Trusts similarly leading development.
  - Reflected in global prudent practice standards such as Fi360’s Prudent Practices.
  - Legal opinions (offshore) mounting that *failure to consider SRI* is a *potential fiduciary breach*. 
SRI and Fiduciary Obligations

- In response, offshore regulators and agencies increasingly provide guidance and/or prescriptive regulations around SRI:
  - UN’s Fiduciary Duties in the 21st Century conclude there is a **positive duty to incorporate ESG into a fiduciary’s investment governance**
  - In the UK, the Pensions Regulator published a new Defined Contribution Code and trustee guide in July 2016 – **no legal obstacle to integrating ESG, encourages trustees to consider long-term sustainability of investments**.
  - In South Africa, the 2011 Amendment to the Pension Funds Act states that “**Prudent investing should give appropriate consideration to any factor which may materially affect the sustainable long-term performance of a fund’s assets, including factors of an environmental, social and governance character.**”
  - In the EU, 2019 pension fund governance and investment regulation (IORP II) explicitly sets out that the “**prudent person**” should consider ESG factors, in terms of both the potential impact on portfolio risks and returns and the institutional investor role as long-term investors.
SRI and Fiduciary Obligations

• Currently NZ fiduciaries are not, in general, bound to consider SRI by legislative or regulatory means:
  
  o There is no explicit mention of SRI in the new Trust Act 2019 (Trustee duties) or FSLAA 2019 and the Code of Conduct (Adviser obligations and FAP licensing).
  
  o Little explicit guidance or requirement for KiwiSaver scheme providers under its Act.
  
  o SRI obligations are not specified in Act’s governing CFIs like NZ Super.

• Regulators need to play catch up in NZ to offshore counter-parts and how our industry has been embracing SRI, but in the meantime….

....**fiduciary duty to include SRI** can be motivated as a necessary part of **duty of care (prudence) and loyalty (knowing your client or beneficiaries) obligations.**
What does SRI and Fiduciary Duties mean in practice?

- Fiduciaries (or Advisers and Asset Consultants they engage) must keep abreast of the empirical evidence on how ESG factors impact risk and returns and evolving regulatory obligations and legal opinion.

- Need to distil this into a clear **belief** around ESG and what it means, e.g. MyFiduciary SRI belief:

<table>
<thead>
<tr>
<th>Belief</th>
<th>Implication for what we do</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible investors who manage environmental, social, governance and cultural (ESGC) factors do better over the long term.</td>
<td>We will design and offer our clients model portfolios with superior ESG characteristics. We will consider ESG as part of the Manager selection and monitoring process.</td>
</tr>
</tbody>
</table>

**ESG may be correlated with superior performance but what is prudent?**

**We can’t be precise, the how much and how best to integrate ESG remains a judgement.**
What does SRI and Fiduciary Duties mean in practice?

- All Trust Deeds and enabling legislation must be scrutinised for what their explicit or implicit SRI obligations entail. Trustees and Advisers serving Trusts must take this into account.

- **Advisers need to take the lead** - actively inform Trustees of their SRI obligations as part of their co-fiduciary role. For retail clients all should be asked about their SRI preferences and educated on what the evidence suggests.

- **Investment Policy Statements document the approach taken to SRI**, or if elected not to pursue, clearly document why not. Omission implies that a beneficiary/client could challenge it not being considered at a future date.

- In the Policy need to clearly distinguish between financially based SRI vs ethically based exclusions and/or impact investments.

  *Investing in the latter may be a fiduciary breach unless its clearly understood and approved by beneficiaries or clients and/or is part of Trust deeds (governing documents) or enabling legislation.*
What does SRI and Fiduciary Duties mean in practice?

• Due diligence of fund managers needs to include the managers consideration of ESG *even if* a client elects not to pursue SRI funds. This is because evidence overwhelmingly suggests consideration of ESG (esp. G) matters.

• Similarly and even more importantly for direct and private market investments, despite much larger data and measurement challenges.

• Portfolio, fund and investment monitoring needs to review whether SRI obligations are being met, and/or whether the market is offering superior options.

*It’s a journey - the fiduciary norm with regards SRI will evolve as evidence, taxonomies, data, accreditation, investable options and regulations change.*